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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,012	09/01/2000	Karen A. Kreutz	8241	5529

27752 7590 06/27/2002

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/653,012

Applicant(s)

KREUTZ ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 May 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10&11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 6 and 8 – 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The applicant claims an absorbent core with a synergistic absorbent capacity of less than 6 grams. The specification does not provide a method of determining a synergistic absorbent capacity. Therefore, one of ordinary skill in the art would not be able to make the invention if relying on disclosure of the instant application.

In the amendment dated 2/4/02, the applicant directs the examiner to a portion of the Code of Federal Regulations that allegedly requires all U.S. tampon makers to conduct synergistic absorbency testing and provides a detailed procedure for this test.

The applicant is reminded that "essential material" is defined as that which is necessary to (1) describe the claimed invention, (2) provide an enabling disclosure of the claimed invention, or (3) describe the best mode.

In any application that is to issue as a U.S. patent, essential material may not be incorporated by reference to non-patent publications.

The examiner also notes that the website referred to by the applicant in the amendment dated 2/4/02 does not disclose any method for determining the syngyna absorbent capacity.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moder (US 5,986,165).

With reference to claim 1, Moder et al. (hereinafter "Moder") discloses a feminine hygiene kit comprising an absorbent tampon (14), said tampon comprising an absorbent core and a withdrawal mechanism attached thereto (col. 9, line 54 to col. 10, line 24 and figure 4) and a backup feminine protection product (12) wherein the tampon and the backup feminine protection product are packaged in a common package as set forth in col. 6, lines 47 – 55.

The difference between Moder and claim 1 is the provision that the absorbent core has a syngyna absorbent capacity of less than 6 grams.

It would have been obvious to one of ordinary skill in the art to modify the kit of Moder by providing an absorbent tampon having an absorbent core with a synergistic absorbent capacity of less than 6 grams because Moder discloses the use of three of the four absorbencies designated by the FDA in his patent and states that depending upon the desired absorbency one desires in the finished tampon, the basis weight of the absorbent ribbon can vary as set forth in col. 20, lines 1 – 13. Therefore, it would only require ordinary skill in the art to provide a lighter absorbency, i.e. the use of a junior tampon – the fourth absorbency designated by the FDA, if desired. Likewise, since Moder discloses a “regular” absorbency, a “super” absorbency and a “super-plus” absorbency, it shows that Moder recognizes the advantages of making different absorbencies available in the kit for use based on the desire of the consumer. Therefore, it would have been obvious to include a “junior” absorbency, if desired, in the same type of kit disclosed by Moder.

Regarding claim 2, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is a pantiliner as set forth in col. 6, lines 24 – 26.

As to claim 3, Moder discloses a feminine hygiene kit wherein the pantiliner has a caliper of less than or equal to about 3 mm as set forth in col. 7, lines 40 – 41.

With reference to claim 4, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is a sanitary napkin as set forth in col. 8, lines 44 – 48.

With respect to claim 5, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is an absorbent interlabial device as set forth in col. 3, lines 5 – 9.

Claims 1, 6 and 8 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stravitz (US 6,164,442).

With reference to claim 1, Stravitz discloses a feminine hygiene kit comprising an absorbent tampon and a backup feminine protection product wherein the tampon and the backup feminine protection product are packaged in a common package as set forth in col. 6, lines 8 – 38.

The difference between Stravitz and claim 1 is the provision that tampon have a withdrawal mechanism attached thereto and that the absorbent core have a synergistic absorbent capacity of less than 6 grams.

Stravitz does not explicitly state that the tampon provided in the kit has a withdrawal mechanism attached thereto. However, it is well known in the art that the basic structure of a tampon includes a withdrawal mechanism attached thereto. Additionally, Moder provides a tampon with a withdrawal mechanism attached thereto.

It would have been obvious to one of ordinary skill in the art to modify the tampon of Stravitz by providing a withdrawal mechanism because the withdrawal string will provide a safe and reliable means by which the tampon can be withdrawn from a woman's vagina after it has absorbed a certain amount of menstrual fluid as taught by Moder in col. 19, lines 34 – 39.

Moder also provides an absorbent tampon having an absorbent core with a synergistic absorbent capacity of from 6 grams to over 12 grams.

It would have been obvious to one of ordinary skill in the art to modify the tampon of Stravitz to provide a tampon with a synergistic absorbent capacity of less than 6 grams because Moder discloses the use of three of the four absorbencies designated by the FDA in his patent and states that depending upon the desired absorbency one desires in the finished tampon, the basis weight of the absorbent ribbon can vary as set forth in col. 20, lines 1 – 13. Therefore, it would only require ordinary skill in the art to provide a lighter absorbency, i.e. the use of a junior tampon – the fourth absorbency designated by the FDA, if desired. Likewise, since Moder discloses a “regular” absorbency, a “super” absorbency and a “super-plus” absorbency, it shows that Moder recognizes the advantages of making different absorbencies available in the kit for use based on the desire of the consumer.

Further, the applicant states on page 10 of the specification that the use of a tampon having an absorbency in the range of less than or equal to about 6 grams offers several advantages in the learner's kit of the claimed invention. This statement provides support for the reasoning that the regular absorbency tampon will function equally as well as a junior absorbency tampon and that substituting a junior absorbency tampon for a regular absorbency tampon would only require ordinary skill in the art.

Regarding claim 6, Stravitz provides a feminine hygiene kit comprising a tampon, a backup feminine protection product and a mirror packaged together in a common package as set forth in col. 6, lines 8 – 32.

With respect to claims 8 and 19 – 20, it is well known in the art to package a tampon with a tampon insertion guide and/or instruction booklet which would thereby assist the user in creating a tampon usage system, in order to provide the user with personal assistance and necessary guidelines associated with using the product.

It would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to include such guides and/or instructions to provide assistance to users that are not familiar with tampon usage.

With reference to claims 9 and 14 – 18, it would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to employ any and/or all of the claimed limitations based on the targeted population because the purpose of the kit in general is to provide convenience to the user. Likewise, Stravitz discloses that a space is provided in the kit to accommodate additional items or articles as desired as set forth in col. 6, lines 13 – 15.

Claims 10 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stravitz, as applied to claims 1 and 6 and further in view of Morrow (US 5,988,386).

The difference between Stravitz and claim 10 is the provision that the feminine hygiene kit further comprises an insertion glove.

Morrow teaches a feminine hygiene kit further comprises a glove as set forth in col. 11, lines 41 – 43.



It would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to include a glove because the glove allows the woman's hand to remain sanitary while inserting/removing the tampon as taught by Morrow in col. 11, lines 50 – 52. While the glove of Morrow is explicitly disclosed as a removal glove, the glove remains fully capable of being used as an insertion glove and serves the same purpose as the insertion glove.

Regarding claims 11 – 13, Morrow teaches the claimed limitations as set forth in col. 11, lines 33 – 58.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
June 21, 2002

  
DENNIS RUHL  
PRIMARY EXAMINER